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DEPARTMENT OF HEALTH SERVICES

Perkins Funeral Home, Inc.
308 Dixwell Avenue.
New Haven, Ct. 06511

Petition No. 880222-56-001
Inspection Certificate 326

MEMORANDUM OF DECISION

Procedural Background:

On October 18, 1989, the Connecticut Board of Examiners for Embalmers and Funeral Directors (hereinafter referred to as the Board) convened to hear the cases of James Perkins, Embalmer and The Perkins Funeral Home (The Memorandum of Decision of the case of James Perkins, Embalmer is a separate document and is captioned as James Perkins, 308 Dixwell Avenue, New Haven, CT 06511; Petition No. 880616-30-007.

A Statement of Charges dated 7/24/89 was brought by the Department of Health Services (hereinafter referred to as the Department) against the Perkins Funeral Home, Inc. (hereinafter referred to as the Respondent). It alleges in two counts violations of Connecticut General Statutes §20-227.

The Notice of Hearing dated 8/10/89 and the Statement of Charges were sent to the Respondent by Certified Mail - Return Receipt Requested.

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The hearing originally scheduled for 9/7/89 was continued at the request of the Respondent's counsel. A second continuance request was denied. (Tr. 10/18/89 p.3.) An answer to the Statement of Charges was filed.

Each member of the Board involved in this decision was present at the hearing, and this decision is based entirely on the evidence presented at that hearing.

The standard of proof required in this matter and applied in this decision is a preponderance of the evidence. In re: Polk, 90 N.J. 550, 449 A.2d 7 (1982); Sherman v. Commission on Licensure to Practice the Healing Art, District of Columbia Court of Appeals No. 12556, 407 A.2d 595 (1979).

This Memorandum of Decision sets forth the Board's findings of fact and conclusions of law. To the extent that findings of fact actually represent conclusions of law, they should be so considered and vice versa.

FINDINGS OF FACT:

After consideration of the entire record the findings of fact are the following:

1. Perkins Funeral Home is and was at all times referenced in the Statement of Charges the holder of Connecticut Inspection Certificate 326.
2. A representative of Perkins Funeral Home was provided the opportunity to attend an informal "compliance" conference. (Tr. 10/18/89 p.4.)
3. The Statement of Charges and Notice of Hearing were sent to Perkins Funeral Home, Inc. by Certified Mail - Return Receipt Requested. (Dept. Ex. 2.)
4. The hearing began and concluded on 10/18/89.
5. James Perkins, the principal shareholder of the Perkins Funeral Home, Inc. was not present at the hearing. However, the Perkins Funeral Home, Inc. was represented by counsel during the hearing.
6. On or about April 6, 1984, Wilhelmina Perkins was either an agent of said home, was authorized to enter into contracts on behalf of said home or had apparent authority to enter into contracts on behalf of said home. (See Dept. Ex. 3.)

7. On or about April 6, 1984, Wilhelmina Perkins entered into a contract with Emily Tinney regarding the latter's funeral. (See Tr. 10/18/89 p. 6 and Dept. Ex. 5 and 7.)
8. On or about April 6, 1984 Emily Tinney made a payment of \$3,873.00 to Wilhelmina Perkins on behalf of Perkins Funeral Home Inc. (See Tr. 10/18/89 p.6 and Dept. Ex. 7.)
9. Emily Tinney requested refund of the above payment. (See Dept. Ex. 3.)
10. Employees or agents of Perkins Funeral Home, Inc. 1) failed to make arrangements with Scott's Funeral Home of Richmond, Virginia; 2) failed to send a payment to Scott's Funeral Home of Richmond, Virginia; and 3) failed to timely make a refund after being requested to do so, and said conduct was improper. (See Dept. Ex. 3.)
11. At all times relevant to the Statement of Charges, James Perkins was an agent of said home, was authorized to enter into contracts on behalf of said

home, or had apparent authority to enter into contracts on behalf of said home. (See Dept. Ex. 3.)

12. The Respondent accepted one or more checks from Ella Mae Shaw in payment of funeral services, which checks were in excess of the cost of said services, with the understanding that the remainder would be returned to her. (See Dept. Ex. 3.)

13. The Respondent did not timely return the remainder listed in 12. above (See Dept. Ex. 3), and diverted the remainder, listed in 12. above, to personal use. (See Dept. Ex. 6.)

DISCUSSION AND CONCLUSIONS OF LAW:

Connecticut General Statutes, Section 20-227 provides in pertinent part that:

The department of health services may refuse to grant a license or inspection certificate or the board may take any of the actions set forth in section 19a-17 against a licensee, registrant or holder of an inspection certificate if it finds the existence of any of the following grounds: ... (4) incompetency, negligence or, misconduct in the carrying on of such business or profession....

1. Perkins Funeral Home Inc. is the holder of an inspection certificate as cited in Connecticut General Statutes §20-227.
2. The Respondent was provided with the opportunity to demonstrate compliance with all lawful requirements for the retention of the Inspection Certificate as required by Connecticut General Statutes §4-182(c).
3. Notice of the Hearing was properly sent and sufficiently provided information as mandated by Connecticut General Statutes §4-177 and §4-182.
4. The hearing was held in accordance with Chapters 54 and 385 of the Connecticut General Statutes and Section 19-2a-1 through 19-2a-30 of the Public Health Code. The Board heard testimony and received documentary evidence from both parties on each count in the complaint.
5. The answer filed complied with section 19-2a-18 of the Public Health Code.
6. With regard to the FIRST COUNT the Board finds that the Respondent's failure to timely return payment to

Ms. Emily Tinney was misconduct in violation of
Connecticut General Statutes §20-227(4).

7. With regard to the SECOND COUNT, the Board finds that
the Respondent's failure to timely return the money
involved as well as the diversion of that money for
personal use was misconduct in violation of
Connecticut General Statutes §20-227(4).

ORDER:

Pursuant to the authority vested in it by Connecticut General
Statutes §19a-17, the Board in the case against Perkins Funeral
Home, Inc., Petition No. 880222-56-001, hereby orders the
following:

The Inspection Certificate number 326 shall be suspended
for three years.

Connecticut Board of Examiners for
Embalmers and Funeral Directors

2016
DATE

Paul E. Driscoll
by Paul E. Driscoll, Chairperson

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Docket No.: CV 90-385351 S

PERKINS FUNERAL HOME, INC.
Plaintiff

v.

DEPARTMENT OF HEALTH
SERVICES, AND CONNECTICUT
BOARD OF EXAMINERS OF
EMBALMERS AND FUNERAL
DIRECTORS

Defendants

SUPERIOR COURT

JUDICIAL DISTRICT OF HARTFORD
NEW BRITAIN AT HARTFORD

DECEMBER 7, 1990

STIPULATION OF AGREEMENT

The Plaintiff having moved for a stay of the decision of the Defendants, the parties hereby stipulate and agree as follows:

1. The suspension of the Perkins Funeral Home's Inspection Certificate will be stayed pending the outcome of the appeal; and

2. The Funeral Home will conduct its operations subject to oversight by the Board; and

3. Mr. James Perkins will have absolutely no involvement whatsoever in the management, operation, and administration of the Funeral Home, its financial matters, funerals, and the handling and embalming of dead human bodies. In this regard, Mr. Perkins will neither involve himself, in any capacity, with the arrangement of funerals and the handling of billings, collections and legal tender nor supervise any of the individuals doing so; and

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4. The appeal will be prosecuted expeditiously; and

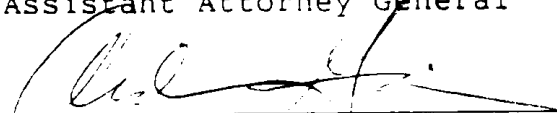
5. If any of the above terms are violated, this stipulation is null and void, and Perkins Funeral Home, Inc. shall suspend operations immediately in accordance with the Board's decision and be in contempt of court.

DEFENDANTS

DEPARTMENT OF HEALTH SERVICES
AND CONNECTICUT BOARD OF
EXAMINERS OF EMBALMERS AND
FUNERAL DIRECTORS

BY: CLARINE NARDI RIDDLE
ATTORNEY GENERAL


Richard J. Lynch
Assistant Attorney General



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Assistant Attorney General
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P.O. Box 120
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PLAINTIFF

PERKINS FUNERAL HOME, INC.



Ronald M. Meneo, Esq.
Meneo & Goldfield
234 Church Street, Suite 110
New Haven, CT 06510

ORDER

The foregoing Stipulation having been heard, it is hereby ORDERED: GRANTED / DENIED.

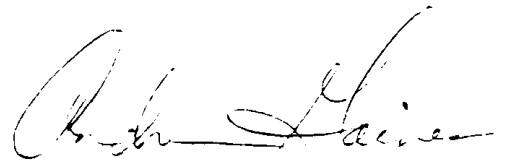
By the Court,

Assistant Clerk

CERTIFICATION

I hereby certify that a copy of the foregoing was hand delivered this 7th day of March, 1991, to:

Ronald Michael Meneo
Carl Goldfield
Attorneys at Law
Meneo & Goldfield
234 Church Street
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New Haven, CT 06510



Andrea B. Gaines
Assistant Attorney General